IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5064 OF 2006

The Nashik Merchants' Co-op.
Bank Ltd. Nashik ....Petitioner
V/s.
The Collector & Ors. ....Respondents

Mr.P.N. Joshi for the Petitioner.
Mr.A.H. Palekar, AGP for Respondent Nos.1 to 4.

CORAM : R.M. SAVANT, J.
DATED : 12TH JUNE, 2007.

P.C. :

1. This Petition filed under Article 227 of the India takes exception to the order dated 12.5.2006 passed by the Collector, Nashik. By the said order, the Collector has directed a Special Audit in respect of the election expenses which have been incurred by the authorities while holding the elections to the Board of Directors of the Petitioner - Bank for the period 2000 to 2005.

2. Pursuant to the application made by the Petitioner in respect of the expenses incurred for the said elections, the Collector who was the Returning Officer for the said elections, had directed an audit to be carried out at the election expenses in the said

audit an expenditure of Rs.28,00,000/- and odd was found to be in excess. The Petitioner Bank therefore prayed for a direction that action should be taken in terms of the said audit report for effecting recoveries from the persons concerned.

3. It appears that Respondent Nos.2 and 3 herein, who were the concerned officials had made a representation to the Collector. The contention of the Respondents was that the audit was not carried out taking into consideration a realistic view of the matter, that the magnitude of the work involved in the said election was of a different scale than the one in the earlier election and therefore the same ought to have been taken into consideration while preparing the audit report. The Respondent Nos.2 and 3 filed Writ Petition No.1485 of 2006, which came to be disposed of by this Court by its order dated 16.3.2006. By the said order, the representation made by Respondent Nos.2 and 3 who were the Petitioners therein, was directed to be considered and disposed of within a particular time frame. In the light of the said directions, the Collector has taken into consideration the said representation and has passed an order directing a Special Audit to be conducted, which is impugned in the present Petition.

4. It is the contention of the Petitioner that having once directed the audit to be carried out and having taken the steps towards effecting recoveries it was wrong on the part of the Collector to now direct a Special Audit. It was further contended on behalf of the Petitioner that the same has been done to shield the erring Government officials who are responsible for the excess expenditure. Having made the said submissions, the learned counsel for the Petitioner further submitted that the Petitioner abovenamed would participate in the re-Audit or Special Audit as directed by the Collector and take such objections as the Petitioner is entitled to in respect of the said re-Audit and further submitted that such participation would be without prejudice to its rights and contentions in respect of the issues raised in the above Petition and that the issues raised in the above Petition should be explicitly kept open, in case occasion arises for the Petitioner to approach this Court pursuant to the re-Audit or Special Audit.

5. In my view rather than stalling the re-Audit which would settle the issue once and for all, it would be then just and proper that without going into merits of the contentions raised by the Petitioner

herein, the Petitioner as submitted by the learned counsel, should be permitted to take such objections as permissible in law in respect of the Special Audit. The said objections to be considered by the Auditor concerned and dealt with in accordance with law.

6. The learned counsel for the Petitioner submits that the Special Audit be directed to be carried out by a Chartered Accountant who is on the panel of the Government. If such private Chartered Accountants are on the panel of the Government, it would be proper looking to the background on account of which the audit has been necessitated, that a Chartered Accountant may preferably be appointed. It is made clear that the contentions of the Petitioner are explicitly kept open to be agitated in any proceedings that would arise pursuant to the Special Audit. The Special Audit to be completed as expeditiously as possible and not later than three months from date.

7. With the aforesaid observations, the Petition is accordingly disposed of.

(R.M. SAVANT, J.)